

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

ROBIN MITCHEL DEAL
as the Administrator of the Estate
of **DOROTHY DEAL**,

Plaintiff,

v.

Civil Action No.: 5:21-cv-00409
(Removal from Circuit Court of Raleigh County,
Civil Action No. 21-C-148

**OUTBACK STEAKHOUSE
FLORIDA, LLC,**

Defendant.

NOTICE OF REMOVAL

COMES NOW Defendant, Outback Steakhouse Florida, LLC, by counsel, Montè L. Williams, Christopher S. Etheredge, and the law firm of Steptoe & Johnson, PLLC, and pursuant to 28 U.S.C. §§ 1332, 1441(b), and 1446, hereby remove this action from the Circuit Court of Raleigh County, West Virginia to the United States District Court for the Southern District of West Virginia upon the following grounds:

1. On May 24, 2021, Plaintiff filed a Complaint in the Circuit Court of Raleigh County, West Virginia, Civil Action No.: 21-C-148, naming Outback Steakhouse West Virginia, Inc. as the sole Defendant.

2. On May 27, 2021, Plaintiff sent a letter to Defendant's insurer attaching a courtesy copy of the Complaint and "[Plaintiff's Decedent's] medical records and bills, in the amount of \$249,182.45 regarding her injuries sustained in the incident which occurred on May 25, 2019." A copy of Plaintiff's May 27, 2021 Letter is attached hereto and incorporated herein as Exhibit A.

3. On June 1, 2021, Outback Steakhouse West Virginia, Inc. was served through its agent for receipt of process in West Virginia.

4. Thereafter, counsel for Defendant conferred with counsel for Plaintiff and advised the same that Outback Steakhouse West Virginia, Inc. does not own the property on which the incident which is the subject of the Plaintiff's Complaint allegedly occurred. Rather, that property is owned by Outback Steakhouse Florida, LLC.

5. On July 1, 2021, Plaintiff filed the Amended Complaint substituting Outback Steakhouse Florida, LLC for Outback Steakhouse West Virginia, Inc. as the sole Defendant in the instant cause of action.

6. Copies of the Summonses, Complaints, and all other documents served on Defendant are attached hereto and incorporated herein as Exhibit B.

7. Defendant Outback Steakhouse Florida, LLC is a limited liability corporation incorporated and headquartered in Florida.

8. On information and belief, Plaintiff is a citizen and resident of Texas.

9. The previously named Defendant, Outback Steakhouse West Virginia, Inc., is incorporated in West Virginia and is headquartered in Florida.

10. This Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b) because the same was filed within 30 days after service of the Summons and Amended Complaint upon the Defendant. *See Elliott v. Am. State Ins. Co.*, 883 F.3d 384, 391 (4th Cir. 2018) ("The general rule, as established by the Supreme Court in [*Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347–48 (1999)], is that the time for counting the days for filing notice of removal under § 1446(b) starts when the defendant is formally served with the summons and complaint making the defendant an official party to the action and requiring the defendant to appear."); 28 U.S.C. § 1446(b)(3) ("[I]f the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or

otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.”). Further, it is filed within one year of commencement of this action.

11. A Notice of Filing of Notice of Removal is being filed contemporaneously hereto with the Clerk of the Circuit Court of Raleigh County, West Virginia, a copy of which is attached hereto and incorporated herein as Exhibit C.

12. Pursuant to 28 U.S.C. § 1441, venue is proper in this Court because this District embraces the Circuit Court of Raleigh County, West Virginia, the forum from which this case is hereby removed.

13. Jurisdiction is vested in this Court pursuant to 28 U.S.C. § 1332, as this civil action is a matter between citizens of different states, and the amount in controversy exceeds \$75,000, exclusive of interest and costs. *See Persinger v. Lowe’s Home Centers, LLC*, No. 2:20-cv-00219, 2020 WL 2026974, at *2 (S.D. W. Va. Apr. 27, 2020) (“Where the amount in controversy is not specified in the complaint, the defendant must ‘demonstrate that it is more likely than not that the amount in controversy exceeds the jurisdictional amount.’”) (quoting *Landmark Corp. v. Apogee Coal Co.*, 945 F. Supp. 932, 935 (S.D. W. Va. 1996).

14. Although Exhibit A does not specifically demand the sum of \$249,182.45, it contains a table summarizing the medical bills appended thereto which Plaintiff’s Decedent allegedly incurred as a result of the incident which is the subject of Plaintiff’s Complaint. In concert with Plaintiff’s Decedent’s alleged injury and resulting treatment and the medical records submitted in support thereof, Exhibit A makes plain that the amount in controversy in the instant cause of action exceeds the statutory threshold of \$75,000.

WHEREFORE, Defendant, by counsel, respectfully advises that this civil action has been removed from the Circuit Court of Raleigh County, West Virginia to the United States District Court for the Southern District of West Virginia, and that this Court shall assume jurisdiction over this action.

**OUTBACK STEAKHOUSE FLORIDA,
LLC,
By counsel,**

/s/Christopher S. Etheredge

Montè L. Williams (WVSB No. 9526)

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OUTBACK STEAKHOUSE
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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of July, 2021, I filed the foregoing “*Notice of Removal*” upon counsel of record by placing a true and accurate copy of the same in the regular course of the United States Mail, postage prepaid, in an envelope addressed as follows:

Greg A. Hewitt
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204 North Court Street
Fayetteville, WV 25840

/s/Christopher S. Etheredge

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